

**REMARKS/ARGUMENTS**

Claims 1-7, 10-28, 31-42, and 45-48 are pending in the present application. Claims 11 and 32 were amended; and no claims were added or cancelled. Reconsideration of the claims is respectfully requested.

**I. 35 U.S.C. § 103, Obviousness: Claims 1-7, 10-13, 16-28, 31-34, 37-42 and 47-48**

The Examiner has rejected claims 1-7, 10-13, 16-28, 31-34, 37-42 and 47-48 under 35 U.S.C. § 103 as being unpatentable over Bodie, Investments, 3<sup>rd</sup> Edition, McGraw-Hill Companies, 1996 (hereinafter "Bodie") in view of Newsbytes, 'Audible Objects' Have Virtual Reality Apps., Newsbytes, Page 2, September 25, 1992, p.1 (hereinafter "Newsbytes") and Sander, The Complete Idiot's Guide to Day Trading Like a Pro, Alpha Books, New York, NY, 1999, pp. 34 & 104 (hereinafter "Sander"). This rejection is respectfully traversed.

The Office Action states:

**Regarding Claim 1**, Bodie discloses a method comprising the steps of:

- receiving a current performance indication (price) of the investment vehicle (asset) within the plurality of investment vehicles (plurality of assets within a portfolio). (see p. 142); and
- wherein the current performance indication (price) of the investment vehicle (security) is processed by analyzing and evaluating performance (price) of the investment vehicle (security) based on criteria (specified price) for at least one of buying the investment vehicle (limit-buy/stop-buy orders) or selling the investment vehicle (limit-sell/stop-loss orders). (see p. 88 - 89).

Bodie does not teach the underlined limitations - a method comprising the steps of:

- matching the current performance indication of the investment vehicle with a predetermined audible signature, wherein the current performance of the investment is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle; and
- transmitting the predetermined audible signature based on results of the matching.

Newsbytes discloses a method comprising the steps of:

- matching performance data (market data) with a predetermined audible signature (synthesized sound). (see p. 1); and
- transmitting (broadcasting) the predetermined audible signature (synthesized sound) based on results of the matching (data/sound parameters). (see p. 1).

Sander discloses a method comprising the steps of:

- matching the current (real-time) performance indication (price) of the investment vehicle (security) with a predetermined audible signature (bells and whistles/alarms and alerts), wherein the current performance of the investment (price) is matched to a predetermined audible signature (bells and whistles/alarms and alerts) by analyzing and evaluating performance of the investment vehicle based on criteria (price or volume levels) for the investment vehicle (security). (see p. 34 and 104).

Bodie does not teach that the method is automatic. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Verner*, 120 USPQ 192.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bodie by incorporating an audible signature, as disclosed by Newsbytes and Sander, to "help users of information systems comprehend more far more data than they could take in visually." (see Newsbyte, p. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bodie, Newsbytes and Sander by incorporating an audio signature controlled by "data parameters", as disclosed by Newsbytes and Sander, to be controlled by the analysis and evaluation of performance of the investment vehicle based on criteria when investment vehicle performance matched said criteria, as disclosed by Sanders, providing audio notification when investment vehicle performance reached said criteria.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bodie, Newsbytes and Sander by incorporating the basis for said criteria to be at least one of buying the investment vehicle or selling the investment vehicle, as disclosed by Bodie, allowing the user to set criteria based upon said intentions, buying or selling investment vehicle, each of which may have separate notification criteria.

Office Action dated March 6, 2006, pages 3-5

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants submit that the combination of Bodie in view of Newsbytes and further in view of Sander fails to teach or suggest all of the features of the present invention. Independent claim 1, which is representative of independent claims 18, 22, 39, and 41 with regard to similarly recited material, recites:

1. A method for annunciating performance of an investment vehicle within a plurality of investment vehicles in a market, the method comprising the steps of:
  - receiving a current performance indication of the investment vehicle within the plurality of investment vehicles;

matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle; and transmitting the predetermined audible signature based on results of the matching.

Applicants agree with the Examiner that Bodie does not teach matching the current performance indication of the investment vehicle to a predetermined audible signature and transmitting the predetermined audible signature based on results of the matching.

Newsbytes does not cure the deficiencies of Bodie. Claim 1 of the present invention recites the feature of "matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle." Such a feature is not taught or suggested by Newsbytes. The Examiner points to page 1 of Newsbytes as teaching matching the current performance indication of the investment vehicle to a predetermined audible signature. The most relevant passage is reproduced below for the Examiner's convenience:

The data controls the parameters of the synthesized sound; as data values increase or decrease, sound characteristics such as pitch, brightness, or speed change accordingly. In one demonstration, various sounds represented stocks, bonds, and other historical market data, creating an auditory "picture" of four-and-a-half years of market ups and downs.

('Audible Objects' Have Virtual Reality Apps. Newsbytes. September, 25, 1992. emphasis added)

The above cited passage of Newsbytes teaches that sounds are used to represent stocks and that the sound characteristics, such as pitch or tone, of the sounds change as the stocks increase or decrease in value, creating an auditory "picture" of four-and-a-half years of market ups and downs. Newsbytes teaches that sound characteristics change, but the sound remains the same.

According to Newsbytes, sonification is the use of sound to display data. Newsbytes teaches sonification of historical market data. That is, a sound is assigned to a stock and as the historical data is read; the sound is altered based on a comparison between the previous data point and the current data point. Newsbytes teaches assigning a sound to a stock that has a starting value and altering that sound for each data point, relative to the previous data point. For example, as taught by Newsbytes, stock A is assigned the note A and has a starting value of \$5. The next historical data point shows a price of \$5.50,

so the note A rises in pitch because \$5.50 is greater than \$5. The next data point shows a price for stock A of \$5.25, so now the note lowers in pitch because \$5.25 is less than \$5.50. Yet the \$5.25 is still higher than the original \$5; but there is no way of indicating this as Newsbytes only teaches raising and lowering the pitch as each data point changes.

Therefore, there is no "matching" of a current performance to a predetermined audible signature. Newsbytes does not teach "matching." Instead, the current performance, or the change from the previous performance is indicated by altering the sound characteristics of the same sound that was used to indicate the previous performance indication. As taught by Newsbytes, the same sound is used to indicate every performance indication generated by a particular stock, bond, and so forth, only the characteristics of the sound change as performance of the instrument varies. In contradistinction, the present invention recites "matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle." The matching of the current performance indication to a predetermined audible signature is based on the current data point only. That is, the current performance indication of the particular instrument drives what sound is generated. For example, under the present invention, if a particular stock reaches a price of \$10 per share, a bell might sound; if the stock were to reach the price of \$20 per share, the song "Happy Days are Here Again" might be played; and if the stock reached a price of \$1 per share a loud, blaring alarm, or siren might be heard. Thus, the predetermined audible signature is matched to the current performance indication based on the analysis and evaluation of the current performance indication of the investment. Newsbytes does not teach this feature. Newsbytes does not teach determining what the current performance indication is and then matching a predetermined audible signature to the current performance. As taught by Newsbytes, a sound is assigned to a particular investment vehicle.

Newsbytes does not teach matching a current performance indication to a predetermined sound. Instead Newsbytes teaches assigning a sound to a specific investment vehicle and varying the sound's characteristics as the performance of the investment vehicle changes over time. Therefore it follows that Newsbyte does not teach transmitting the predetermined audible signature based on the result of the matching. Newsbytes does teach transmitting a sound. However the sound is not based on the result of the matching. Newsbytes teaches that the sound is assigned to the investment vehicle by the user and as a result of analyzing the current performance indication and determining a match based on the current performance indication, as recited in claim 1.

Furthermore, Sander does not cure the deficiencies of Bodie or Newsbytes or the combination of Bodie in view of Newsbytes. Sander does not teach the feature missing from Bodie in view of

Newsbytes, the feature of "matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle." Such a feature is not taught or suggested by Sander. The Examiner points to pages 34 and 104 of the Sander text as teaching this feature. Specifically, the Examiner asserts that the bells and whistles/alerts mentioned on page 104 of Sander as being a predetermined audible signature. The passage of page 104 is reproduced below for the Examiner's convenience:

American life has certainly changed in this century – from the early decades when cars only came in one color (black) to the bewildering array of choices now offered to us for the simplest things, like a cup of coffee. How you want your information (and how much information you want) is up to you. Customization is one of the really cool things about these packages. You can set up a screen literally any way you want, with several windows each monitoring just the data you want to monitor. You choose the size, you choose the colors. Excellent color options draw your eyes to what's really important. You set your own bells and whistles – alarms and alerts to tell you when the things you're tracking reach certain price or volume levels. They also ring up any news item crossing the wires involving a company you're following.

Applicants respectfully submit that the term "bells and whistles," as used by Sander in this passage, is a colloquial term meaning unnecessary elaborate features or special features that are not necessary but are incorporated in a product to make it appear more desirable or useful. That is, Sander is making the point that there are a lot of extra options that can be used in certain software packages to help track investment vehicles, including the use of alarms and alerts. Prior to Sander using the phrase "bells and whistles," Sander was explaining about all the visual windows and indications that a user can optionally select and have present on their computer. As such, Applicants submit that Sander was referring to setting up alarms and alerts as a visual option that either created a pop up window or displayed in an already open window and that this option was merely another "bells and whistles." Applicants do not believe that the term "bells and whistles," as used by Sanders, means a literal bell sound and a literal whistle sound as the Examiner appears to be asserting. Therefore, Sander fails to teach the feature of "matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle."

Thus, for all the reasons set forth above, Applicants submit that independent claims 1, 18, 22, 39, and 41 are not obvious over the combination of Bodie in view of Newsbytes and further in view of Sander, as all the features of claims 1, 18, 22, 39, and 41 are not taught by the references. Claims 2-7, 10-

13, 16, 17, 19-21, 23-28, 31-34, 37, 38, 40, 42, and 47-48 are dependent claims that depend from independent claims 1, 18, 22, 39, and 41. As Applicants have already demonstrated claims 1, 18, 22, 39, and 41 to be in condition for allowance, Applicants submit that claims 2-7, 10-13, 16, 17, 19-21, 23-28, 31-34, 37, 38, 40, 42, and 47-48 are also allowable at least their virtue of depending from an allowable claim.

Therefore, the rejection of claims 1-7, 10-13, 16-28, 31-34, 37-42 and 47-48 under 35 U.S.C. § 103 has been overcome.

## II. 35 U.S.C. § 103, Obviousness: Claims 14-15, 35-36 and 45-46

The Examiner has rejected claims 14-15, 35-36 and 45-46 under 35 U.S.C. § 103 as being unpatentable over Bodie, Newsbytes and Sander, and further in view of Masunaga, Worldwide Computing And Its Applications - WWCA '98, Springer-Verlag, Berlin, Germany. 1998, pp. 20 - 21 (hereinafter "Masunaga"). This rejection is respectfully traversed.

The Office Action states:

**Regarding Claims 14-15, Bodie does not teach the underlined limitations – a method wherein:**

- The audible signature is a musical instrument digital interface (MIDI) standard; and
- The MIDI standard is a plurality of MIDI standards.

Formatting of a sound in a MIDI standard and/or a plurality of MIDI standards is old and well known in the art of information systems and multimedia systems, as evidenced by Masunaga which states that sound files are formatted in a wide variety of different formats such as "wav, au, aiff, and multiple MIDI formats". (see p. 20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bodie, Newsbytes and Sander by incorporating the use of MIDI standards, as disclosed by Masunaga, allowing for the use of standard existing formats for the audible signature file.

Office Action dated March 6, 2006, page 12-13.

Claims 14, 15, 35, 36, 45 and 46 are dependent claims that depend from independent claims 1, 22, and 41. As discussed above in Section I regarding claim 1, the combination of Bodie in view of Newsbytes and further in view of Sander fails to teach every feature of claim 1. Masunaga does not cure the deficiencies of Bodie in view of Newsbytes and further in view of Sander. Masunaga does not teach the feature missing from Bodie in view of Newsbytes and further in view of Sander, the feature of "matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle." The

Examiner does not point to any passage of Masunaga as teaching this feature, nor does any passage of Masunaga teach this feature.

Therefore, the combination of Bodie in view of Newsbytes and further in view of Sander and further in view of Masunaga fails to teach each and every feature of the present invention as recited in claims 1, 22, and 41. Thus, independent claims 1, 22, and 41 are not obvious over Bodie in view of Newsbytes and further in view of Sander and further in view of Masunaga, as all the features of claims 1, 22, and 41 are not taught by the references. As claims 14, 15, 35, 36, 45 and 46 are dependent claims that depend from independent claims 1, 22, and 41, Applicants submit that claims 14, 15, 35, 36, 45 and 46 are also allowable at least by virtue of their depending from an allowable claims.

Therefore, the rejection of claims 14-15, 35-36 and 45-46 under 35 U.S.C. § 103 has been overcome.

### III. Objection to Claims: Claims 11 and 32

The Examiner has stated that claims 11 and 32 were objected for their dependency upon cancelled claims. In response, the claims have been rewritten to overcome this objection.

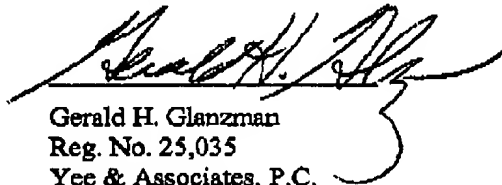
### IV. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: June 6, 2006

Respectfully submitted,



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